

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

**COMMUNICATION WORKERS OF AMERICA,
LOCAL 13000, AFL-CIO**

and

Case No. 4-CA-38123

PAMELA TRONSOR, An Individual

Patricia Garber, Esq., Counsel for the General Counsel.

Richard Markowitz, Esq., *Markowitz & Richman*, Counsel for the Respondent.

DECISION

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge: This case was heard by me in Philadelphia, Pennsylvania on October 24, 2011¹. The Complaint herein, which issued on August 31, and was based upon an unfair labor practice charge that was filed by Pamela Tronsor, an individual, on May 11, alleges that by letter dated April 5, and by email dated May 5, James Gardler, the president of Communications Workers of America, Local 13000, AFL-CIO, herein called Respondent, attempted to cause Communications Workers of America, District 13, herein called District 13, Tronsor's employer, to discharge or otherwise discriminate against her because she was participating in a Board proceeding involving the Respondent, and because Respondent believed that she was seeking to publicize the proceeding, and told the recipients of the email, including some employees of the union, that it was attempting to do so. Respondent defends that Tronsor is not employed by the Respondent, and that while Gardler did write the letter and email in question, they did not contain any request that District 13 take any action against Tronsor.²

I. Commerce Allegation

The Respondent is a labor organization representing employees in bargaining with employers, and has been an unincorporated association with its principal office and place of business in Philadelphia, Pennsylvania. During the past year, it received gross revenues in excess of \$500,000 from Communications Workers of America, AFL-CIO, in Washington, D.C., which revenues are derived from membership dues collected by employers employing members of the Respondent and these dues were remitted by these employers to the Communications Workers of America. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

¹ Unless indicated otherwise, all dates referred to herein relate to the year 2011.

² Counsel for the General Counsel's unopposed Motion to Correct Transcript is hereby granted.

II. The Facts

A. Background

Tronsor has been employed as an organizing coordinator for eight years by District 13 (which became District 2-13 in July), encompassing approximately seventy CWA locals, including the Respondent, within the States of Pennsylvania and Delaware. The staff representatives of District 13 service these constituent locals of District 13. As the organizing coordinator for District 13, Tronsor reports to the vice president, Ed Mooney, assistant to the vice president, Jim Byrne, the administrative director, Marge Krueger and the international staff representatives. Her principal responsibility relates to organizing the unorganized, and evaluating leads to determine if they can be developed into a successful organizing campaign. This includes drawing up the plans as well as the campaign budget and the campaign materials, and training organizing committees and volunteers to work on the campaigns. She has frequently performed work for the Respondent, which is the largest local of District 13, planning and working on organizing campaigns. There is a CWA Staff Union, which represents the CWA staff employees as well as the staff of the Pennsylvania AFL-CIO, and she was an officer of the union for a year and a half, ending in August.

B. Harry Arnold's NLRB Case

In October 2010 the CWA Staff Union filed an unfair labor practice charge against the Respondent alleging that Harry Arnold, a local organizer for the Respondent, was terminated unlawfully, and Tronsor was subpoenaed to testify at the hearing by Counsel for the General Counsel³. At the conclusion of the first day of hearing on February 28, prior to Tronsor testifying, the judge spoke to the parties and encouraged them to settle the matter rather than going ahead with the hearing, and the parties agreed that they would attempt to settle the case prior to the resumption of the hearing the following day. The parties did settle the case on the following day, and Tronsor did not have to testify.

C. Tronsor's Telephone Call to William Ross

On the evening of February 28, after the day's conclusion of the hearing, Tronsor called William Ross, executive director of Local 38010, the Newspaper Guild Division of the CWA. She testified that she told him that she had been subpoenaed to appear at the hearing by the NLRB and "...was concerned about how it might be reported in the press...and that it might...damage the labor movement in general and CWA in particular..." She told him that the case involved Arnold's discharge by the Respondent and that she was fearful for her job based upon the outcome of the case. She also said that Arnold had said that he had contacted the press, and

³ There was a conflict in the testimony of Tronsor, Gardler and Jeff Reamer, Respondent's Executive Vice President, about a meeting that they attended on February 14, where Gardler asked Tronsor if she was subpoenaed by Counsel for the General Counsel to testify at the hearing. Tronsor testified that she told him that she was not sure that was something she could talk to him about; Gardler and Reamer testified that she said that she had not been subpoenaed. There was also a conflict in the testimony of Tronsor and Ross involving their February 28 telephone call. Ross testified that Tronsor asked him about his relationship with Mooney, and that she had heard that they did not get along. Tronsor testified that this subject was not discussed in that conversation. As I find the testimony regarding the February 14 discussion about the Board subpoena, and the February 28 conversations regarding Ross' relationship with Mooney irrelevant to the ultimate issue herein, it will not be discussed further.

Tronsor was concerned that members of the press would be at the hearing. Ross said that he didn't work at the papers and didn't think that there was anything that he could do. She repeated that she was concerned about her job based upon the outcome of the hearing and did not want the press to show up at the hearing, as it could do damage to the CWA and the labor movement in general.

Ross testified that he received a telephone call from Tronsor on the evening of February 28. She asked if he was aware of the case involving Arnold, and he said that he wasn't aware of it. She told him briefly about the case and that she had been subpoenaed to testify by the Labor Board. She then asked him if he knew whether Jane VonBergen, a reporter for the Philadelphia Inquirer, would be covering the hearing and he said that he did not know one way or the other. He testified: "She then asked if I could have Jane cover the hearing. And I said I did not handle the editorial decisions at the newspaper, I represent the reporters." He ended the call by telling her that if she testified, to just tell the truth, wished her luck and hung up. A few days later he wrote a letter to Mooney regarding the call. The letter, dated March 4, states, *inter alia*:

Just wanted to recap the disturbing phone call I received on Monday evening February 28th from Pam Tronsor.

Pam called to ask if I was aware of the firing of an organizer and NLRB complaint filed against Local 13000. I said I was not aware. She asked if I knew if one of my members Jane VonBergen a business reporter at the Philadelphia Inquirer was going to cover the story. I said I didn't know, and I don't get into any news coverage decisions...She told me she was subpoenaed to testify on Tuesday, and I wished her luck.

Gardler testified that in about mid-March Mooney told him about the letter that he received from Ross and Gardler arranged to meet with Ross to learn more about the February 28 telephone call. Ross told Gardler that Tronsor first asked him if he was aware of the Board hearing relating to Arnold that was taking place and he said that he didn't know anything about it. She then asked him if he knew VonBergen and could he have someone cover the Labor Board hearing. He replied that he did not assign reporters to cover particular cases, that was not his responsibility, and he didn't understand why she was contacting him in that regard. Gardler told Ross that he was shocked that Tronsor would attempt to have someone cover a hearing that could embarrass the union and hamper it in organizing drives.

D. Gardler's Response

On April 5, Gardler wrote to Mooney:

This letter is being sent on behalf of CWA Local 13000 pertaining to the conduct of the District 13 Organizer, Pam Tronsor. Our local has always been one of the strongest supporters and participants in all facets of organizing in the CWA, but we cannot in good conscience allow this staff member's actions pertaining to recent Labor Board charges filed against our local to go unaddressed. It was quite disturbing on the day of the hearing to see your organizer appear on behalf of the charging party since it is crystal clear that our local had not violated the law. It is also disturbing when you put it in perspective what the ramifications this charge would have had if by some small chance this charge was upheld. The organizing program of not only Local 13000 and District 13, but of the entire CWA as a whole would have been damaged. But as you may be aware her actions following the first day of hearings on the evening of February 28th are what are most appalling regarding this charge and cannot be tolerated.

Following a conditionally approved withdrawal of the charge that absolved the local of any wrongdoing, we became aware of a phone call that was placed after the initial day of hearings to Bill Ross, Executive Director of TNG-CWA Local 10. Apparently District Organizer Tronsor contacted Mr. Ross in an attempt to get this hearing publicized through the local media. She asked Mr. Ross if he had heard about the Labor Board hearing against Local 13000 and that she was testifying in a hearing against Local 13000. Mr. Ross explained that District Organizer Tronsor advised him that she felt they should have someone covering this story for the media. Mr. Ross said that he advised District Organizer Tronsor that he does not assign reporters to stories. Mr. Ross and I went on to discuss the mutual respect both of our locals have for one another and the commitment we have to support each other's issues, which is why he was so surprised to be receiving this call from District Organizer Tronsor...

It is beyond comprehension to think that this person is not only on staff for District 13 but responsible for the same organizing activities she sought to jeopardize. Her actions demonstrate contempt for the Local that provides more man hours and voluntary support for organizing than any other local within District 13. This local assisted in performing her job responsibilities even when she was nowhere to be found. There is no place for this type of behavior in District 13 or anywhere in the CWA.

As you can clearly understand this Local has no interest in working with someone that would put the CWA and more specifically this Local in harm's way. We would appreciate any and all steps necessary to remove this person from any dealings with the members of this union. She clearly cannot be trusted and without a doubt she is not deserving of a position on staff at District 13 or anywhere else within the CWA.

On May 2, Tronsor sent an email to Gardler, with a copy to Mooney, asking for information to assist the union in an organizing drive. In a response dated May 5, by email to Tronsor, Mooney, and Krueger, as well as about sixteen other individuals⁴ employed by the Respondent or other locals of the Communications Workers of America within District 13, with the April 5 letter attached, Gardler wrote:

Pam, maybe you misunderstood the letter that Local 13000 provided to VP Mooney concerning your blatant attack on Local 13000. As I stated in that letter, you are not deserving of a staff position or any position within the CWA. This Local and our members will not work with you on any level. You have no respect for organizing, no respect for the position you hold within the District and no respect for the CWA. The fact that you still hold a staff position at the District is disturbing. Attached as an FYI is the letter that was sent to VP Mooney to remind you of your stupidity. I have also CC several others pertaining to the issue so they can understand and protect themselves from future attacks. This Local is committed to organizing and will do any and everything necessary to succeed. It just WILL NOT be with YOU.

Gardler testified that he has no supervisory authority over Tronsor and has no authority or control over her employment, nor does he have any vote in determining whether her employment with District 13 should be continued. He testified further that he didn't intend the April 5 letter to cause her discharge. Rather, he was expressing that although the Respondent

⁴ These individuals include union presidents, vice presidents, executive vice presidents, assistant to the vice president, secretary treasurer, executive secretary treasurer, administrative director, staff representatives, and an organizer.

would continue its organizing campaigns, because of her actions, they would not do so with her.

III. Analysis

5 The only credibility determination relevant to the ultimate determination herein is the conflict in the testimony of Tronsor and Ross relating to Tronsor's telephone call to him on the evening of February 28. Tronsor testified that she told Ross that she was fearful that publicity about the Board hearing could damage the CWA and the union movement generally, and she told Ross that she "...did not want anyone to show up at the hearing." Ross testified that
10 Tronsor asked him if he could have VonBergen cover the hearing, and he told her that he could not control the assignment of reporters. This is a difficult credibility determination because both Tronsor and Ross appeared to be testifying in an honest and truthful manner. However, I note that the letter that Ross wrote to Mooney four days later, telling him about the conversation with Tronsor, does not specifically mention her request to have VonBergen cover the hearing, stating
15 only: "She asked if I knew if one of my members Jane VonBergen a business reporter at the Philadelphia Inquirer was going to cover the story. I said I didn't know..." That statement could be interpreted both ways: "Could you ask her to cover it?" or "Could you ask her not to cover it.?" On the other hand, there was no clear reason for Tronsor to call Ross. As neither
20 VonBergen nor any other reporter was at the Board office for the opening of the hearing on February 28, there was no reason to expect that anybody would be there the following day. Therefore, there appeared to be no reason for Tronsor to call Ross to tell VonBergen not to come to the hearing. I therefore credit Ross' testimony that Tronsor called him and asked him if he could have VonBergen cover the hearing.

25 There are two separate violations alleged herein: that Gardler, by his April 5 letter to Mooney, attempted to cause District 13 to discharge or otherwise discriminate against Tronsor because of her protected concerted activity of appearing at, and attempting to publicize, the Board proceeding, and that the May 5 email to Tronsor, Mooney, Krueger and numerous executives and employees of the Respondent and other locals of the international union told
30 them that the Respondent was attempting to cause District 13 to discharge or otherwise discriminate against her because of these protected concerted activities. It is obvious that an attempt to publicize a Board proceeding constitutes protected concerted activity, even when it could cause harm to the employer's or the union's reputation, and that threats against an employee in retaliation for assisting the Board in an unfair labor practice or a representation case violates Section 8(a)(1) of the Act. In *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S.
35 731, 740 (1973), the Court stated that the rights secured by Section 7 of the Act include "...the right to utilize the Board's processes- without fear of restraint, coercion, discrimination, or interference from their employer." See also *Allied Aviation Service Company of New Jersey, Inc.*, 248 NLRB 229, 231 (1980); *Anheuser-Busch, Incorporated*, 337 NLRB 3, 15 (2001);
40 *Management Consulting, Inc.*, 349 NLRB 249 (2007). I therefore find that Tronsor was engaged in protected concerted activities by appearing at the Board hearing on behalf of Arnold on February 28, and by calling Ross on February 28 and asking him to have VonBergen cover the Board hearing. The issues herein are whether Gardler's letter and email attempted to cause District 13, Tronsor's employer, "to discharge or otherwise discriminate against" her, or whether
45 it was simply a letter and email from Gardler "venting" his anger toward Tronsor and requesting that she not be assigned to work for the Respondent, and whether his May 5 email sent to numerous union employees, with the April 5 letter attached, tended to chill their Section 7 rights, in violation of Section 8(a)(1) of the Act.

50 Initially I note that the Respondent was not Tronsor's employer, there is no allegation that the Respondent is a joint employer with District 13 as Tronsor's employer, nor is there any evidence that Gardler or the Respondent has any authority to affect Tronsor's employment. In

fact, six months after Gardler wrote his letter to Mooney, Tronsor was still employed by District 13. However, that does not dispose of this matter. The principal allegation is that the Respondent *attempted* to cause District 13 to discharge, or otherwise discriminate against, Tronsor. This allegation does not require that the alleged wrongdoer, herein the Respondent, have an employer-employee relationship with Tronsor, and neither does the Act, which, in defining the term “employee,” states that it “shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise...” The Board, in discussing this issue in *New York New York Hotel & Casino*, 356 NLRB No. 119, p. 5 (2011), stated:

The precise terms of the Act’s prohibitions also make clear that an employer’s action toward the employees of other employers can constitute an unfair labor practice. The prohibition at issue in this case, contained in Section 8(a)(1), provides that it is an unfair labor practice for an employer “to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.” The prohibition is not limited to interference with the rights of *his* employees...

The Board as well as the courts have held in a wide variety of contexts that “an employer under Section 2(3) of the Act may violate Section 8(a) not only with respect to its own employees but also by actions affecting employees who do not stand in such an immediate employer/employee relationship.”

See also *Pilot Development Southwest*, 317 NLRB 962 (1995), where the Board found that an employer violated Section 8(a)(1) of the Act when it told another employer that it could not employ an employee, whom it had discharged for engaging in protected concerted activities, to work on its premises.

The first paragraph of Gardler’s April 5 letter to Mooney says that it was “quite disturbing” to see Tronsor appearing on behalf of Arnold at the Board hearing and ends by saying that Tronsor’s telephone call to Ross on the evening of February 28, asking him to have VonBergen publicize the hearing, “...cannot be tolerated.” The last two paragraphs contain the strongest statements:

It is beyond comprehension to think that this person is not only on staff for District 13 but responsible for the same organizing activities she sought to jeopardize. Her actions demonstrate contempt for the Local that provides more man hours and voluntary support for organizing than any other local within District 13. This local assisted in performing her job responsibilities even when he was nowhere to be found. There is no place for this type of behavior in District 13 or anywhere in the CWA.

As you can clearly understand this Local has no interest in working with someone that would put the CWA and more specifically this Local in harm’s way. We would appreciate any and all steps necessary to remove this person from any dealings with the members of this union. She clearly cannot be trusted and without a doubt she is not deserving of a position on staff at District 13 or anywhere else within the CWA.

Further, in his May 5 email to Tronsor, with copies to Mooney, Krueger and about fifteen others in the union, some executives, some employees, he again stated, *inter alia*: “...you are not deserving of a staff position or any position within the CWA. This local and our members will not work with you on any level...The fact that you still hold a staff position at the District is disturbing.”

The letter and email clearly constitute an attempt by Gardler to have District 13

discharge Tronsor. This is established by his statements that “there is no place for this type of behavior (her protected concerted activities) in District 13 or anywhere in the CWA” and “you are not deserving of a staff position or any position within the CWA.” I therefore find that by writing this April 5 letter to Mooney, the Respondent violated Section 8(a)(1) of the Act. I further
 5 find that this letter and email could clearly chill the employees who received the email in the exercise of their Section 7 rights, and that by sending the letter and email to employees of the union, the Respondent further violated Section 8(a)(1) of the Act.

Conclusions of Law

10 1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

15 2. The Respondent violated Section 8(a)(1) of the Act by sending a letter dated April 5 to District 13 attempting to cause District 13, Tronsor’s employer, to discharge or otherwise discriminate against her, and by sending that letter, together with a May 5 email, to union employees, reiterating its desire that Tronsor be discharged, Respondent further violated Section 8(a)(1) of the Act.

The Remedy

20 Having found that the Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and that it be ordered to take certain affirmative action designed to effectuate the policies of the Act. With respect to the latter,
 25 I order that Gardler write a letter to District 13, with copies to all those who received his May 5 email, stating that he has no objection to Tronsor’s continued employment with District 13, nor does he object to Tronsor working on projects with the Respondent. In addition to posting the traditional Board Notice at its facilities, the Respondent shall mail a copy of the Notice to all those who received Gardler’s letter and email dated April 5 and May 5.

30 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁵

ORDER

35 The Respondent, Communication Workers of America, Local 13000, AFL-CIO, its officers, agents and representatives, shall

40 1. Cease and desist from:

(a) Attempting to cause District 13 (now District 2-13) to discharge, or otherwise discriminate against Pamela Tronsor, or any other employee, in retaliation for their protected concerted activities.

45 (b) Notifying other employees of the union that it was attempting to cause Tronsor’s employer to discharge, or otherwise discriminate against her, in retaliation for her protected

50 ⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

concerted activities.

(c) In any like or related manner, interfering with, restraining or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Notify Mooney, and all the recipients of Gardler's May 5 email, that it has no objections to Tronsor's continued employment with District 2-13, nor does it have any objection to Tronsor working on projects involving the Respondent. In addition to posting the notice referred to below, the Respondent shall mail a copy of the notice to each individual who was a recipient of the May 5 email relating to Tronsor.

(b) Within 14 days after service by the Region, post at its union office in Philadelphia, Pennsylvania copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 5, 2011.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., December 16, 2011.

Joel P. Biblowitz
Administrative Law Judge

⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT attempt to cause District 2-13, Communications Workers of America, AFL-CIO, or any other labor organization, to discharge, or otherwise discriminate against Pamela Tronsor, or any other employee, because that employee attempted to publicize a Board proceeding, or engaged in any other protected concerted activities.

WE WILL NOT notify other employees of the Union that we were attempting to have Tronsor discharged because she attempted to publicize a Board proceeding or because he engaged in other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of your rights as guaranteed in Section 7 of the Act.

COMMUNICATIONS WORKERS OF AMERICA, LOCAL 13000, AFL-CIO
(Employer)

Dated _____ **By** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

615 Chestnut Street, One Independence Mall, 7th Floor

Philadelphia, Pennsylvania 19106-4404

Hours: 8:30 a.m. to 5 p.m.

215-597-7601.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 215-597-7643.